

APPEAL NO. 031233
FILED JULY 8, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 14, 2003. The hearing officer resolved the sole disputed issue by deciding that the decedent sustained a compensable injury while in the course and scope of his employment on _____, that resulted in his death. The appellant (employer) appealed, arguing that the hearing officer erred in determining that the decedent's work, rather than the natural progression of the decedent's heart disease, was a substantial contributing factor causing his fatal heart attack. The respondent (claimant beneficiary) responded, urging affirmance.

DECISION

Affirmed.

The claimant beneficiary had the burden to prove that the decedent sustained a compensable injury as a result of a motor vehicle accident (MVA) while in the course and scope of his employment, rather than as a result of a heart attack. Under Section 408.008, a heart attack can be compensable only when it is found to be caused by a specific event in the employment and when the preponderance of the medical evidence indicates that the work, rather than the natural progression of a preexisting heart condition or disease, was a substantial contributing factor of the heart attack. See, e.g., Texas Workers' Compensation Commission Appeal No. 91081, decided December 31, 1991; Texas Workers' Compensation Commission Appeal No. 93948, decided December 3, 1993; Texas Workers' Compensation Commission Appeal No. 94327, decided April 28, 1994; and Texas Workers' Compensation Commission Appeal No. 001817, decided September 12, 2000. We have noted on several occasions that this provision of the statute requires a comparison or weighing between the conditions leading to the heart attack. It is insufficient if the medical evidence indicates that the work was a factor related to the heart attack. The preponderance of the medical evidence must indicate that the work, rather than the natural progression of a preexisting heart condition or disease, was a substantial contributing factor. See Texas Workers' Compensation Commission Appeal No. 93121, decided April 2, 1993, and the cases cited therein. Finally, we note that, "there can be more than one substantial contributing factor, so long as the work is a greater factor than the natural progression of any underlying heart condition or disease." Texas Workers' Compensation Commission Appeal No. 970148, decided March 12, 1997, citing Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991.

The hearing officer did not err in determining that the decedent sustained a compensable injury. The hearing officer applied the appropriate statutory provision of the 1989 Act, Section 408.008, in making the determination on compensability. It is undisputed that the decedent suffered a head injury on (first date of injury), and a MVA

on _____, and the hearing officer could conclude that both incidents happened in the course and scope of his employment. A medical examiner's report dated January 15, 2002, states that:

given the history of head trauma and the findings of a skull fracture, subdural and subarachnoid hemorrhages, and a contusion of the brain, I believe the head trauma of (first date of injury) contributed to if not caused a confused state resulting in his loss of control of the vehicle. The subsequent stress of the events then exacerbated his underlying heart disease and caused death.

An amended medical examiner's report dated June 20, 2002, states that, "the severity of the injuries cannot be overlooked in this instance and the [decedent's] death cannot be ruled natural causes solely due to his heart disease." The hearing officer could conclude from the medical evidence that the decedent suffered damage or harm to the physical structure of the body, including the head, chest, ribs, and stress that arose out of, and while engaged in or about the furtherance of the affairs or business of the employer on _____, when he was involved in a MVA. The hearing officer could conclude that these injuries, rather than the natural progression of a preexisting heart condition or disease, were substantial contributing factors of the decedent's death. Concerning the employer's contention, we find that there is no misconstruing or misreading of the evidence in the decision. Conflicting medical evidence was presented, and the hearing officer resolved those conflicts in favor of the claimant beneficiary. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision on the compensability issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

Margaret L. Turner
Appeals Judge